

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

PHILIP C.,)	
)	
)	2 CA-JV 2008-0105
Appellant,)	DEPARTMENT B
)	
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
ARIZONA DEPARTMENT OF)	Rule 28, Rules of Civil
ECONOMIC SECURITY and)	Appellate Procedure
HAYLEY C.,)	
)	
Appellees.)	
)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 18413400

Honorable Joan L. Wagener, Judge Pro Tempore

AFFIRMED

Nuccio & Shirly, P.C.
By Salvatore Nuccio

Tucson
Attorneys for Appellant

Terry Goddard, Arizona Attorney General
By Michelle R. Nimmo

Tucson
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V Á S Q U E Z, Judge.

¶1 Philip C. appeals from the juvenile court’s order adjudicating his daughter, Hayley C., a dependent child. He contends the court erred by denying his motion to continue the adjudication hearing and that the adjudication order is not supported by sufficient evidence. “On review of an adjudication of dependency, we view the evidence in the light most favorable to sustaining the juvenile court’s findings. We generally will not disturb a dependency adjudication unless no reasonable evidence supports it.” *Willie G. v. Ariz. Dep’t of Econ. Sec.*, 211 Ariz. 231, ¶ 21, 119 P.3d 1034, 1038 (App. 2005) (citation omitted); see also *Michael M. v. Ariz. Dep’t of Econ. Sec.*, 217 Ariz. 230, ¶ 10, 172 P.3d 418, 421 (App. 2007) (appellate court accepts “juvenile court’s findings of fact unless they are clearly erroneous” but reviews legal issues de novo). We affirm.

¶2 Hayley’s guardian ad litem filed a private dependency petition alleging Hayley was “being subjected to potential sexual abuse by her brother” because her parents seemed not to “understand the serious nature” of a reported incident of the brother’s molestation of Hayley. The petition alleged that Hayley’s mother, Tamara, was “not following through with both individual therapy for Hayley and family therapy,” instead “insisting that the family should be allowed to work out the problems on their own,” and further alleged that Philip “may work out of state” and have “limit[ed] . . . ability to protect Hayley from abuse or neglect in the home.” At the initial dependency hearing, the juvenile court substituted the Arizona Department of Economic Security (ADES) as the petitioner, and ADES filed a substituted dependency petition raising similar allegations against Tamara. As to Philip, it

alleged that he was “unable to . . . protect” Hayley because his employment with the Merchant Marines kept him away from the family “for months at a time.”

¶3 The juvenile court adjudicated Hayley dependent after a contested dependency hearing.¹ It found that the family would not “continue to participate in services without the intervention of the ADES and the Court,” implicitly finding that additional services, including individual and family therapy, were necessary to insure Hayley’s well-being. It found that Philip’s employment with the Merchant Marines kept him from participating in services and that he “continue[d] to remain out of the United States.” It also found both parents “minimize[d]” the effect of the sexual abuse on Hayley.

Motion to Continue

¶4 Philip filed a motion to continue the adjudication hearing based on the Servicemembers Civil Relief Act (SCRA), 50 App. U.S.C. §§ 501 through 596. Section 522 of the SCRA requires a court to continue for at least ninety days “any civil action or proceeding” upon application by a “servicemember” who meets specified conditions. The juvenile court denied Philip’s motion after determining the SCRA does not apply to members of the Merchant Marines. We review the court’s determination on this legal issue de novo. *See Michael M.*, 217 Ariz. 230, ¶ 10, 172 P.3d at 421; *see also Kimu P. v. Ariz. Dep’t of Econ. Sec.*, 218 Ariz. 39, ¶ 13, 178 P.3d 511, 515 (App. 2008) (“We review a juvenile court’s interpretation of a statute de novo.”).

¹Philip was not present at the hearing, but he participated through counsel.

¶5 Section 511 of the SCRA defines “servicemember” as “a member of the uniformed services, as that term is defined in section 101(a)(5) of title 10, United States Code.” That section, in turn, provides: “The term ‘uniformed services’ means: (A) the armed forces; (B) the commissioned corps of the National Oceanic and Atmospheric Administration; and (C) the commissioned corps of the Public Health Service.” 10 U.S.C. § 101(a)(5). The “armed forces” are defined as the “Army, Navy, Air Force, Marine Corps, and Coast Guard.” 10 U.S.C. § 101(a)(4).

¶6 Philip does not claim to be a member of the armed forces or the commissioned corps of either the Public Health Service or National Oceanic and Atmospheric Administration. He argues merely that “similarities between the Merchant Marines and branches of the armed services” are “sufficient to incorporate [him] into the protections of the [SCRA].” Given the express definition of “servicemembers” included in the SCRA, however, we disagree. The juvenile court did not err by holding the SCRA did not apply to this proceeding nor in denying Philip’s motion to continue the adjudication hearing.

Sufficiency of the Evidence

¶7 Philip does not contest the juvenile court’s findings that his employment in the Merchant Marines prevented him from participating in services and kept him out of the country and away from the family. He argues, however, that “any allegation that [he] failed to protect [Hayley] was not supported by sufficient evidence” because Hayley “was being appropriately parented by [her] mother.” For reasons fully explained in our decision on

Tamara’s separate appeal, *see Tamara C. v. Ariz. Dep’t of Econ. Sec.*, No. 2 CA-JV 2008-0103 (memorandum decision filed Feb. 12, 2009), reasonable evidence supported the court’s determination that Tamara was not providing Hayley with proper and effective parental care and control. *See* A.R.S. § 8-201(13)(a)(i) (dependent child is one who is “[i]n need of proper and effective parental care and control and who has no parent or guardian . . . willing to exercise or capable of exercising such care and control”); *see also Michael M.*, 217 Ariz. 230, ¶ 10, 172 P.3d at 421 (ADES had burden of proving dependency by preponderance of evidence). Because Philip’s argument is entirely dependent on a contrary determination, we need not address it further here.

¶8 The juvenile court’s order adjudicating Hayley dependent is affirmed.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge